

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

INCOME TAX APPLICATION No 238 of 1999

with

Income-tax Applications Nos.218 of 1999,  
239 of 1999,240 of 1999 & 241 of 1999

For Approval and Signature:

Hon'ble MR.JUSTICE B.C.PATEL and

Hon'ble MR.JUSTICE P.B.MAJMUDAR

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1. Whether Reporters of Local Papers may be allowed : YES  
to see the judgements?
2. To be referred to the Reporter or not? : NO
3. Whether Their Lordships wish to see the fair copy : NO  
of the judgement?
4. Whether this case involves a substantial question : NO  
of law as to the interpretation of the Constitution  
of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge? : NO

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COMMISSIONER OF INCOME TAX

Versus

N.R. PAPERS & BOARDS LTD.  
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Appearance:

MR MANISH R BHATT for Petitioner  
MR SN SOPARKAR for Respondent No. 1  
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CORAM : MR.JUSTICE B.C.PATEL and

MR.JUSTICE P.B.MAJMUDAR

Date of decision: 18/10/1999

ORAL JUDGEMENT(Per: Patel.J)

#. All these applications arise out of a common judgment passed by the Income-tax Appellate Tribunal( "Tribunal" for short), Ahmedabad Bench A, Ahmedabad, hence these applications are disposed of by this common judgment.

#. The The Commissioner of Income-tax (CIT for short), Surat moved the Tribunal under section 256(1) of the Income-tax Act 1961 (hereinafter referred to as the Act) for making a reference. The following 8 questions were suggested to be referred to this Court:

- " 1. Whether on the facts and in the circumstances of the case, the I.T.A.T., having held that such addition is not justified in Block Assessments was justified in adjudicate the issue on it merit ?
2. Whether on the facts and in the circumstances of the case, the I.T.A.T. was justified to hold that services were rendered by the liaison agents with reference to the additional evidence of countersigned order intents dehors the relevant pieces of evidence taken note of by the Assessing Officer ?
3. Whether on the facts and in the circumstances of the case, the I.T.A.T. was justified by holding that an expenditure already claimed under the provisions of the Act cannot be termed as undisclosed income arising as a result of fictitious debits with reference to papers found in search and investigations based thereon ?
4. Whether on the facts and in the circumstances of the case and proper interpretation of provisions of section 158 BB part-II, part-III of the Form No. 2 B for Block Assessment, the I.T.A.T.was justified in law in holding that the assessee is eligible to deduction under section 80 I or 80 IA with reference to "total undisclosed income" of the Block period ?
5. Whether on the facts and in the circumstances of the case, the I.T.A.T. was justified in law to decide the case on merit after having accepted the preliminary objection that the Assessing Officer was not competent to decide the issue of depreciation in Block Assessment ?

6. Whether on the facts and in the circumstances of the case, the I.T.A.T. was justified in accepting the claim of depreciation with reference to the earlier assessment and the first time additional evidence in the form of an agreement and resolution de hors the facts found on the spot inspection?

7. Whether on the facts and in the circumstances of the case, the I.T.A.T. was justified in deciding the addition on merit after having accepted the preliminary objection that the addition cannot be considered in Block Assessment ?

8. Whether on the facts and in the circumstances of the case, the I.T.A.T. was justified in deleting the addition on account of interest with reference to the advance given for the residential premises of the Directors.

#. Out of the aforesaid questions, question no.4 has been referred to this court by the Tribunal. So far as the questions nos 1 to 3 and 5 to 8 are concerned, the Tribunal in its lengthy judgment has arrived at the conclusion that these questions are not referable as questions of law and hence declined to refer the same to this Court. It is in view of this order passed by the Tribunal that the CIT has made application before this Court under section 256(2) of the Act to direct the Tribunal to refer to this Court, the questions of law, set out in para 4 of the application.

#. The case is of block assessment. Earlier the assessee invoked writ jurisdiction of this court seeking to challenge the notices issued to them under section 143(2) of the Act by which the assesses were required to attend the office of the revenue in connection with the return of income submitted by them for the Assessment Year 1995-96. The assesses pointed out that the search and seizure operation carried out on December 1,1995 was concluded on January 6,1996. Their block assessment under Chapter XIV-B of the Act was made for the block period from April 1,1985 to January 6,1996. In accordance with the provisions of section 158BB of the Act, the total income was worked out after giving credit for the amount disclosed. The assessee pointed out that the income for the Assessment Year 1995-96 was already computed in the assessment year for the block period.

Hence there was no question of proceeding with the regular assessment for the assessment year 1995-96. It was further submitted that in any event no addition could be made to the total income disclosed in the said returns in view of the block assessments made for the period which included the said assessment year 1995-96. The Division Bench of this Court in the case of N.K.Paper & Board Ltd. vs Deputy C.I.T.(Gujarat) reported in 234 ITR 733 considered the provisions in detail. The Court pointed out that the block assessment of undisclosed income to be charged at a higher rate of tax prescribed, was independent of the pending regular assessments and it operated in a different field from the assessment of undisclosed income which was not and would not have been disclosed for the purpose of the Act. Undisclosed income, by Chapter XIV-B is classified separately for the purpose of assessment and is required to be worked out in the manner prescribed therein and treated to a higher rate of tax. This process did not disturb the assessments already made, of the previous years, and was only intended to sniff out what had remained hidden and not disclosed by the assessee. There would, therefore, be no overlapping in the nature of the assessment made under this Chapter of undisclosed income and the regular assessment made under section 143(3) of the Act. The powers of regular assessment are kept in tact and so are all the appellate, revisional and other powers affecting such regular assessment and all the statutory consequences flowing from the exercise of such powers would follow along side of this special assessment procedure devised for dealing with the undisclosed income as a result of search. It, therefore, follows that in the inquiry under section 143(3) for regular assessment which was pending when the block assessment was made, the Assessing Officer who comes across evidence and material which was not found or made available in the process of block assessment, cannot ignore the same and he will be duty bound to make the regular assessment taking into account such evidence and material gathered in the enquiry under section 143(3) to ensure that proper assessment of total income is made and tax is determined on the basis of such assessment. Learned counsel submitted that the Division Bench was not in agreement with the views expressed by two different courts. He submitted that even explanation has been added to section 155 BA by Finance (No.2) Act 1998 with retrospective effect from 1.7.1995. The explanation reads as under:

"Explanation.- For the removal of doubts, it is hereby declared that-

(a) the assessment made under this Chapter shall be in addition to the regular assessment in respect of each previous year included in the block period.

(b) the total undisclosed income relating to the block period shall not include the income assessed in any regular assessment as income of such block period;

(c) the income assessed in this Chapter shall not be included in the regular assessment of any previous year included in the block period."

#. Learned counsel for the revenue further submitted that whatever material is collected during search and seizure has to be evolved and from there if any hidden income or some non permissible deduction is found , then the same will be considered and will form part of block assessment and not regular assessment under section 143 of the Act despite the fact that the assessment is pending. We are not in a position to agree with the submission of the learned counsel for the revenue in view of the decision of this court.

#. It is in this back ground as stated hereinabove, the questions are required to be considered. No question is framed to indicate that the decision rendered by the Tribunal is perverse If at all, the revenue is of the opinion that the Tribunal's decision is perverse, a question in that regard is required to be framed. If such question was framed the Tribunal would have expressed its views . That apart even before this court, no such question is raised.

#. So far as question no.1 is concerned, it is required to be noted that on the facts the Tribunal has arrived at a conclusion.

#. Learned counsel for the revenue submitted that so far as the cross examination of the witnesses is concerned, there is nothing to suggest that the witnesses were not offered for cross examination. In absence of a demand made by the assessee, the Tribunal ought not to have recorded a finding that the witnesses were not offered for cross examination. Mr. Soparkar learned counsel appearing for the respondents drew our attention to para 7 (on page 100) and para 10 (on page 109) regarding cross examination. The Assessing Officer relying upon the statement of one Shri Jani arrived at a conclusion that

the payment of commission to liaison agent was not genuine. Apart from that fact Mr. Soparkar further submitted that in the instant case the liaison fees have been paid to three companies and have been debited in the account books maintained by the assesses which have been audited by the chartered accountants. Payments have been made by account payee cheques and the same have been cleared through banking channel. The Tribunal has observed that ...."in fact the Assessing Officer has accepted the same as correct as per his observation at page 16 of the Assessment Order in the case of Suman Paper & Boards Ltd." Thus it is clear that on appreciation of the evidence, the Tribunal has rendered the decision and the Tribunal has rightly rejected the application refusing to refer the question no.1.

#. So far as question no.2 is concerned, the learned counsel for the revenue submitted that at the appellate stage, additional evidence has been produced. That piece of evidence indicates the admission of the execution of an agreement by the parties. In the application no grievance is made that this piece of evidence was placed on record without giving any opportunity to the revenue. There is nothing to indicate that the revenue objected to the same. When additional evidence is placed before the Tribunal, it is for the Tribunal to accept the same or not. Even if this piece of evidence would not have been placed on record in view of what we have indicated hereinabove, the decision would be the same. In so far as the payment with regard to Liaison Agents is concerned, question no.2 cannot be said to be a question of law and in our view the decision of the Tribunal is not required to be interfered with.

##. With regard to question no.3, the Tribunal has considered in para 11 the necessary averments. The Tribunal has arrived at a conclusion that "If prior to the date of search, the assessee has disclosed the particulars of income or expenditure either in the return or in the books of accounts or in the course of proceedings to the Assessing Officer or where the return has not become due, same are duly recorded in the regular books of account, then, in our opinion, such income cannot be treated as undisclosed income." The assessee has disclosed the particulars of income or expenditure in the return/books of accounts and on the same material the assessing officer wants to take a different view. Such income cannot be treated as undisclosed income so as to tax a person at the rate of 60 percent. The Tribunal has placed reliance upon the judgment of this court in the

case of N.K.Paper & Board Ltd. & Ors. (Supra) and in view of the aforesaid decision, it cannot be said that the view taken by the Tribunal requires any interference.

##. So far as the questions nos 5 and 6 are concerned, both are required to be considered together. It is required to be noted that for earlier assessment years depreciation was allowed by the Assessing Officer in the earlier Assessment Years after verifying the facts which were discovered during the earlier search carried out in the case of the assessee on 21.8.86. The Tribunal has observed that in view of the fact that the premises were used by the assessee as its sales office, the expenditure on renovation incurred for the office, was for the business purpose and accordingly the company is entitled to claim depreciation. The Tribunal has relied upon the decision of this Court in the case of N.K.Paper & Board (Supra) . The Tribunal has rightly answered these questions.

##. So far as questions nos 7 and 8 are concerned, they are required to be considered together. The Tribunal in its detailed order has given reasons. The Tribunal has placed reliance on the decision in the case of DCIT vs Central Hatcheries P.Ltd. reported in (1997) 59 TTJ 587. The assessee has not charged interest on rent deposit. Considering the record and decision referred to hereinabove, the Tribunal arrived at a conclusion. It cannot be said that the decision rendered by the Tribunal requires any interference. Considering the facts placed before the Tribunal, the Tribunal has rendered its decision and therefore, in our opinion the Tribunal has rightly disposed of the applications by referring question no.4 to this Court. These applications are therefore, rejected. Rule discharged in all applications. No order as to costs.

Copy of this order may be kept in all other matters.